



Paper No. 7

HALE AND DORR, LLP
60 STATE STREET
BOSTON MA

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In re Application of
Payapali
Application No. 09/988,728
Filed: 16 November, 2001
Attorney Docket No.: 111.465.132
(PROV 104/118/216)

: **OFFICE OF PETITIONS**
:
: **ON PETITION**
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This is a response to the paper styled as a "Renewed Petition to Request [a 16 November, 2001], Filing Date," filed on 14 November, 2002, which is being treated as a submission under 37 C.F.R. §1.10(d) requesting that the above-identified application be accorded a filing date of 16 November, 2001, rather than the presently accorded filing date of 20 November, 2001.

The petition is **GRANTED**.

The record demonstrates that the application was deposited with and received by the US Postal Service (USPS) in its Express Mail service, under Express Mail label number EL538702903US, on 16 November, 2001, which is evidenced as described below.

Therefore, the application was and is entitled to a filing date of 16 November, 2001, under the provisions of 37 C.F.R. §1.10.

In the original petition filed on 14 December, 2001, Petitioner requested the earlier filing date on the basis that the application purportedly was deposited in an Express Mail drop box on 16 November, 2001, pursuant to the requirements of 37 C.F.R. §1.10. In support, Petitioner originally relied upon:

- a declaration, in which petitioner's counsel states that the application was deposited in Express Mail, Label number EL538702903US;
- a copy of a USPS form letter dated 16 November, 2001, discussing the interruption of service;
- a copy of the Express Mail label set forth above as purportedly returned to the Petitioner by the USPS; and

- a copy of a "Verification of Mailing by Express Mail, dated (Sunday) 18 November, 2001, regarding the deposit of the article in question on (Friday) 16 November, 2001; and

Petitioner contended that the correspondence was given an incorrect filing date due to the suspension of USPS Express Mail Service for mail addressed to Washington D.C. ZIP Codes 202XX through 205XX during November 2001.

The original petition was dismissed on 30 October, 2002, for failure to demonstrate that the USPS letter was sufficient and timely, and failure to demonstrate the nature of the "verification" in lieu of the postal log book.

Consistent with the requirements of 37 C.F.R. §1.10(d)(3)--Petitioner has supplemented the record with a declaration in support of his contention that the record contains corroborating evidence from the USPS and Counsel's own office practice (in lieu of a postal log book) which came into being within one business day.¹

As to the instant application, Application No. 09/988,728, the Office of Initial Patent Examination is specifically instructed to:

- assign a filing date of 16 November, 2001, and
- issue a corrected filing receipt specifying the filing date as that of 16 November, 2001.

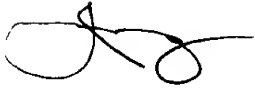
Therefore, this application file is being forwarded to Office of Initial Patent Examination for assignment of the filing date of 16 November, 2001, and issuance of a corrected Filing Receipt reflecting that filing date for Application No. 09/988,728.

The application file will then be forwarded to Technology Center 1600 for examination in due course.

¹ The following guidance was published in the *Official Gazette* of the U.S. Patent and Trademark Office regarding the suspension of Express Mail service:

In some cases a person may use an Express Mail "drop box" without realizing that the local post office is not accepting Express Mail. In that situation, the provisions of 37 C.F.R. §1.10(d) may apply. Usually 37 C.F.R. §1.10(d) is invoked where correspondence is placed in an Express Mail "drop box" prior to the last pick up that is scheduled for the drop box for that day, but the USPS enters an incorrect "date-in" on the Express Mail mailing label, usually the next day's date. To invoke 37 C.F.R. §1.10(d), however, a petition must be corroborated either by evidence from the USPS or by evidence that came into being after deposit and within one business day of the deposit of the correspondence in the Express Mail drop box (e.g., a copy of a log book indicating that the correspondence was deposited on the date in question). See MPEP §513 and TMEP §702.02(e). (Emphasis added.)

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

A handwritten signature in black ink, appearing to be "J. Gillon", with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy